

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

TORRANCE UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2014020548

ORDER FOLLOWING PRE-HEARING
CONFERENCE

On May 23, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Eileen Cohn, Office of Administrative Hearings (OAH). Sharon Watt, Attorney at Law, appeared on behalf of Torrance Unified School (District). George Crook, Attorney at Law, appeared on behalf of Student. The PHC was recorded.

Based on discussion of the parties, the ALJ issues the following order which is effective the date of the PHC:

1. Hearing Dates, Times, and Location. The hearing shall take place on June 1, 2014, 1:30 p.m., June 2, 3, 4, and 5, 2014, 9 a.m., continuing day to day, Monday through Thursday as needed at the discretion of the ALJ.

The hearing shall take place at the District's offices, (Board of Education boardroom), located at 2335 Plaza Del Amo, Torrance, California 90509. District shall ensure that the room can be arranged in a courtroom-like setting, and that there are sufficient electrical outlets to accommodate the ALJ's computer and recording equipment.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

2. Student's mother is ordered to provide the ALJ Student's notarized authorization to act on her behalf. Student is 18 years old. As set forth in District's due process hearing request, Student provided District a notarized statement dated October 7, 2013, appointing his mother as his educational decision-maker and to take all actions on his behalf. Student's mother has not contested District's representation. Student's mother shall provide the ALJ Student's notarized statement at the start of the hearing, or Student shall be required to attend the hearing and make a sworn statement to the ALJ confirming his appointment of his mother as educational decision-maker.

3. Issues and Proposed Resolutions. The sole issue at the due process hearing is as follows:

Whether District's December 13, 2014, individual education program (IEP) offer was an offer of a free and appropriate public education (FAPE), such that District may implement its offer of placement and special education and related services at Village Glen.

4. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall use numbers to identify exhibits, but shall place the letter "S" or "D" in front of the exhibit to designate if it is a Student or District exhibit (for example, "S-5, S-6, or D-1, D-2"). Each exhibit shall be internally paginated by exhibit, or all of a party's exhibits shall be Bates-stamped. Each exhibit binder shall contain a detailed table of contents. The parties represent that they have served their evidence binders on each other in compliance with Education Code section 56505, subdivision (e)(7). At the hearing, each party shall supply an exhibit binder containing its exhibits for use by the ALJ, and a second exhibit binder for use by witnesses. The parties may not serve exhibits on OAH prior to the hearing. In the event of duplicate exhibits, the most legible version will be used.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not included in the exhibit lists and not previously exchanged shall not be admitted into evidence at the hearing unless it is supported by written declaration under penalty of perjury, and the ALJ rules that it is admissible.

The parties are ordered to meet and confer no later than May 28, 2014, to agree upon the complete IEP in issue, and the foundation and admissibility of any other exhibit. The parties shall exchange expert vitae at their time to reduce the amount of hearing time devoted to expert qualifications.

5. Witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses, and shall make witnesses under its control reasonably available. Student has not requested District to produce its employees or agents. The parties shall schedule their witnesses to ensure that there is a witness available to testify at all times during the hearing, to avoid delays in the hearing, to minimize or eliminate the need for calling witnesses out of order, and to ensure that the hearing is completed as scheduled. The parties are encouraged to review and shorten their witness lists prior to the hearing, bearing in mind that evidence will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear.

The parties are ordered to meet and confer no later than Wednesday, May 28, 2014, as to the schedule of witnesses, and the time allotment for each witness, including direct and cross-examination. The District shall have witnesses available in case agreement on a witness list is not reached. The parties shall be prepared at the end of each day of hearing to

discuss the witnesses to be presented the next day and the time the testimony of each such witness is expected to take.

Neither party shall be permitted to call any witnesses not disclosed at the prehearing conference except by stipulation when they meet and confer, or absent a stipulation, for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for cross-examination of each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

6. Scope of Witness Examination. After the first direct and cross-examinations, each party shall be limited in examining the witness to only those matters raised in the immediately preceding examination.

7. Telephonic Testimony. Student may call witnesses from Brehm Preparatory School by telephone. When they meet and confer, the parties shall confirm the witnesses that shall testify by telephone. Unless the opposing party has stipulated that the witness may appear by telephone, the requesting party must seek authorization from the ALJ at the start of the hearing. The proponent of the witness shall provide the proposed witness with a complete set of exhibit binders from all parties, containing all of each party's exhibits, prior to the hearing; and shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness, and the witness to hear objections and rulings. No witness will be heard by telephone unless all these requirements have been fulfilled. The ALJ has the discretion to limit telephonic testimony. (Cal. Code Regs., tit. 5, § 3082, subd. (g).)

8. Timely Disclosure of Witnesses and Exhibits. The parties were required to disclose witnesses and identify documents at the time of the PHC, "at least" five business days prior to hearing. (Education Code section 56505, subdivision (e)(7).)

9. Motions. No motions were pending at the time of the PHC. Student was contemplating a stay-put motion. District confirmed that it continued to fund Student in her current placement as stay put, and as such Student determined that a stay-put motion was not necessary. Other than the stay-put motion, no pretrial motions were contemplated. Any motion filed after the date shall be supported by a declaration under penalty of perjury establishing good cause as to why the motion was not made prior to or during the PHC.

10. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged and should be discussed at the May 28, 2014, meet and confer. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

11. Conduct of Counsel, Hearing Room Decorum, and Recording the Hearing. Counsel, all parties, and all witnesses shall conduct themselves in a professional and courteous manner at all times. Cellular phones, pagers, and other noisemaking electronic devices shall be shut off or set to vibrate during the hearing unless permission to the contrary is obtained from the ALJ.

The ALJ is responsible for recording the official hearing record. The parties are authorized to record the hearing to develop their closing arguments, but shall not share the recording with anyone other than counsel within their firms who are working with them to prepare closing arguments. The recorders shall only be on during the time the ALJ announces “on the record,” and shall be shut off as soon as the ALJ announces “off the record.” The parties are prohibited from recording the ALJ and any other individual when “off the record” and shall be subject to sanctions or other civil penalties for recording anyone “off the record” or sharing the contents of the recording with anyone other than counsel within their firms who are working with them to prepare closing arguments, or using the recording for any purpose other than preparing closing arguments. Counsel may maintain the recording until the time for appeal has expired, or if an appeal has been filed, until OAH’s official transcript of the hearing is completed, at which time counsel shall destroy the recording.

12. Compensatory Education/Reimbursement. Any party seeking reimbursement of expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of expenditures, as part of its case in chief. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

13. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for translation services.

14. Hearing Closed To the Public. The hearing shall be closed to the public.

15. Settlement. The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

IF A FULL AND FINAL WRITTEN SETTLEMENT AGREEMENT IS REACHED AFTER 5:00 P.M. THE DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035. THE PARTIES SHOULD ALSO LEAVE CONTACT INFORMATION SUCH AS CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. THE PARTIES SHOULD SIMULTANEOUSLY **FAX THE SIGNATURE PAGE OF THE**

**SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE
OAH AT THE FAXINATION LINE at 916-376-6319.**

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

16. Failure to comply with ther order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: May 27, 2014

/s/

EILEEN COHN
Administrative Law Judge
Office of Administrative Hearings